

Christ The King Regional High School and Lay Faculty Association Local 1261, American Federation of Teachers, AFL-CIO. Case AO-243

May 10, 1983

ADVISORY OPINION

BY MEMBERS JENKINS, ZIMMERMAN, AND
HUNTER

On December 17, 1982, the Lay Faculty Association, Local 1261, American Federation of Teachers, AFL-CIO, herein called the Union, filed a petition, pursuant to Sections 102.98 and 102.99 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, for an advisory opinion determining whether the Board would assert jurisdiction over Christ the King Regional High School, herein called the Employer, with respect to the unfair labor practice proceeding pending before the New York State Labor Relations Board, herein called the State Board. On December 22, 1982, the General Counsel, by counsel for Region 29, filed a "Response to the Petition." On January 6, 1983, the State Board submitted a letter in support of the Union's petition, and on January 7, 1983, the Employer submitted a letter in opposition to the petition.

In pertinent part, the petition and the statements of the parties allege as follows:

1. Various charges of unfair labor practices were filed by the Union against the Employer resulting, ultimately, in the issuance on February 26, 1980, by the Regional Director for Region 29, of a consolidated amended complaint and notice of hearing in Cases 29-CA-7429, 29-CA-7429-2, and 29-CA-7674, alleging that the Employer had engaged in and was engaging in various unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act. The hearing in those cases, having been rescheduled several times, was canceled by order of the Regional Director on August 28, 1981.

2. On February 18, 1982, the Union filed charges of unfair labor practices against the Employer with the State Board, and the State Board, on October 29, 1981, issued a complaint and notice of hearing in Case Numbers SU-54098, *et al.*

3. On December 10, 1982, the Employer commenced an action in the United States District Court for the Southern District of New York, with File Number 82 CIV. 8233, seeking declaratory judgment and an injunction barring further proceedings by the State Board in the above-described proceeding on the grounds, *inter alia*, that such proceeding is preempted by the exclusive jurisdiction of the National Labor Relations Board over the subject matter of that proceeding.

4. The Employer, a New York educational corporation with its principal place of business located in Middle Village, New York, is engaged in the operation of a private high school.

5. The consolidated complaint in Cases 29-CA-7429, *et al.*, alleges, and the Employer admits, that the Employer's annual gross revenues and interstate purchases satisfy the Board's jurisdictional standards for private educational institutions. In its answer to the consolidated complaint, the Employer denied the Board's jurisdiction on the grounds that it is a religious high school, relying on *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979). The Employer withdrew its objections to the Board's jurisdiction in a letter of November 23, 1981, shortly after the State Board issued its complaint described above, and shortly before the Employer sought injunctive relief from the United States District Court.

6. The Union, in its petition, simply requests the Board to issue an advisory opinion as to the Board's jurisdiction over the Employer. The General Counsel states that its position is "that this case presents squarely to the Board the question of whether it wishes to continue to assert jurisdiction over entities such as [the Employer] in light of the Second Circuit's refusal to enforce the Board's Supplemental Decision in [*Roman Catholic Diocese of Brooklyn*, 236 NLRB 1 (1978); 243 NLRB 49 (1979), *enf. denied sub nom. Bishop Ford Central Catholic High School v. NLRB*, 623 F.2d 818 (2d Cir. 1980), *cert. denied* 450 U.S. 996 (1981)]." The State Board urges the Board to issue an advisory opinion declining jurisdiction because the Employer is "forum shopping"; thus, if the State Board is without jurisdiction to proceed on the complaint it has issued, the underlying conduct could not be the subject of charges before the National Labor Relations Board because it is now outside the 10(b) period of limitations. The Employer argues that an advisory opinion is inappropriate here, because the Board generally will issue such opinions only to decide whether an employer meets the Board's discretionary jurisdictional standards, and no such issue is raised by the petition here.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the basis of the above, the Board is of the opinion that:

The Board's advisory opinion proceedings are designed primarily to determine questions as to the applicability of the Board's discretionary jurisdictional standards to an employer's "commerce" op-

erations.¹ The entire submission by the parties herein basically raises the issue whether the Employer, because of its religious character, is exempt from the Board's jurisdiction under the rule of *NLRB v. Catholic Bishop of Chicago*, above. This issue does not fall within the intendment of the Board's advisory opinion rules.² We shall, therefore, dismiss the petition herein.

¹ *Massachusetts Labor Relations Commission*, 236 NLRB 1357 fn. 4 (1978).

Accordingly, it is hereby ordered that, for the reasons set forth above, the petition for an advisory opinion be, and it hereby is, dismissed.

² *Id.* The cases cited by the State Board with respect to "forum shopping" are inapposite; in each, the Board declined to rule on the employer's "commerce" operations where it appeared that the Board would not assert jurisdiction for other reasons, but it does not follow that the Board will entertain a petition where "commerce" operations are not in issue. See *We Transport*, 198 NLRB 949 (1972); *Elmsford Transportation Corp.*, 213 NLRB 257 (1974); *Box Tree Restaurant of New York City*, 235 NLRB 926 (1978); *Double A Property Associates*, 249 NLRB 447 (1980).